

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Altareek Grice, on behalf of himself and
all others similarly situated,
Plaintiff,
v.
Pepsi Beverages Company, et al.,
Defendants.

Case No.: 17-cv-1842-AJB-WVG

**ORDER GRANTING DEFENDANT'S
MOTION TO TRANSFER VENUE
(Doc. No. 6)**

Before the Court is defendant's motion to transfer venue from the Southern District of California to the Southern District of New York. (Doc. No. 6.) Plaintiff filed a notice of non-opposition to defendant's motion. (Doc. No. 9.) The Court finds this motion suitable for determination on the papers without oral argument under Local Rule 7.1.d.1. Accordingly, the motion hearing presently set for November 16, 2017, is **VACATED**.

A district court may order transfer "[f]or the convenience of parties and witnesses" and "in the interest of justice," so long as the action could have been filed in the transferee district in the first instance. 28 U.S.C. § 1404(a). First, defendant maintains the action could have been filed in the Southern District of New York (N.Y.S.D.) because Bottling Group, LLC, (erroneously sued and served as Pepsi Beverages Company (Doc. No. 2)), "is

1 headquartered and maintains its principle place of business in White Plains, New York.”¹
2 (Doc. No. 6-1 at 4.)

3 Second, defendant argues transfer promotes the interests of justice and the
4 convenience of the parties and witnesses. (*Id.* at 4.) The Court typically weighs the
5 following factors: “(1) the location where the relevant agreements were negotiated and
6 executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice
7 of forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to the
8 plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of litigation
9 in the two forums, (7) the availability of compulsory process to compel attendance of
10 unwilling non-party witnesses, and (8) the ease of access to sources of proof.” *Jones v.*
11 *GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000).

12 The first and second factors are neutral. The agreements may have arisen in Florida,
13 where plaintiff was employed, or in New York, where defendant’s principle place of
14 business is, but there are no facts suggesting California or the Southern District of
15 California is a relevant location to the agreements. As to the second factor, both California
16 and New York federal courts are arguably equally familiar with the Fair Credit Reporting
17 Act. (Doc. No. 6-1 at 7.)

18 With regards to the third factor, plaintiff chose the Southern District of California,
19 and courts typically give plaintiff’s choice considerable weight. *Piper Aircraft Co. v.*
20 *Reyno*, 454 U.S. 235, 257 (1981). However, the Court gives little deference to plaintiff’s
21 preferred forum here because plaintiff chose not to oppose this motion or argue this
22 district’s appropriateness. (Doc. No. 9.) Defendant also states “to ‘guard against the
23 dangers of forum shopping,’ a plaintiff’s choice of forum is also given less deference
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27 ¹ The N.Y.S.D. encompasses Westchester County, which includes White Plains. UNITED
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<http://www.nysd.uscourts.gov/>.


1 where, as here, the plaintiff does not reside in the district.” (Doc. No. 6-1 at 5 (citing *In re*
2 *Ferrero Litig.*, 768 F. Supp. 2d 1074, 1078 (S.D. Cal. 2011)).)

3 Factors four through eight also weigh in favor of transfer. Defendant states that all
4 of the “decision-makers and persons most knowledgeable” are “located in New York or
5 Texas.” (*Id.* at 5.) Further, defendant states that plaintiff resides in Florida and was
6 employed there as well. (*Id.* at 6.) Any witnesses plaintiff may have from his Florida
7 employment—such as “supervisors and human resources employees”—are also located in
8 Florida. (*Id.*) Defendant argues these witnesses would be more inconvenienced traveling
9 from Florida to San Diego rather than to New York. (*Id.*) Moreover, defendant “keeps and
10 maintains all its records relating to background checks at its headquarters” (*Id.*) With
11 most of the witnesses and evidence in New York or Florida, the cost of litigation in
12 N.Y.S.D. would be lower than in California based on travel costs alone.

13 Because the ease of litigation would be less burdensome in N.Y.S.D., litigation costs
14 would be reduced, witnesses and evidence would be more accessible, and because plaintiff
15 did not oppose the motion, the Court **GRANTS** defendant’s motion to transfer venue. This
16 action is transferred to the United States District Court for the Southern District of New
17 York.

18 **IT IS SO ORDERED.**

19 Dated: November 1, 2017

20 
21 Hon. Anthony J. Battaglia
United States District Judge